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153

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12/19/89

☐ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 1 month(s), \_\_\_\_\_ days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

**Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:**

- |  |  |
|--|--|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.                   | 2. <input checked="" type="checkbox"/> Notice re Patent Drawing, PTO-948.        |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.                        | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152. |
| 5. <input checked="" type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____  |

**Part II SUMMARY OF ACTION**

1. ☒ Claims 1-27 are pending in the application.  
Of the above, claims \_\_\_\_\_ are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☒ Claims 1-27 are subject to restriction or election requirement.
7. ☒ This application has been filed with Informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable. ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_ has (have) been ☐ approved by the examiner. ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed on \_\_\_\_\_, has been ☐ approved. ☐ disapproved (see explanation).
12. ☐ Acknowledgment is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received  
☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

**EXAMINER'S ACTION**

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-19 and 21, drawn to osteogenic proteins, classified in Class 530, subclass 350 plus.

II. Claim 20, drawn to a DNA sequence, classified in Class 536, subclass 22 plus.

III. Claims 22 and 23, drawn to cell lines, classified in Class 435, subclass 240.1 plus.

IV. Claims 24-27, drawn to antibodies specific for different osteogenic proteins, classified in Class 436, subclass 547 plus.

The inventions are distinct, each from the other, because of the following reasons:

The inventions of Groups I, II, III and IV are deemed to be independent invention in accordance with MPEP 808.01 and 806.04 in that they are not connected in design, operation or effect. The proteins of Group I can be produced by means other than through expression by the DNA sequence of Group II, such as by solid phase synthesis. The cell line of Group III may embrace DNA sequences other than those of Group II and certainly would produce protein materials other than those recited in Group I. Likewise, the antibodies of Group IV may be specific to the proteins of Group I, but their production may be accomplished by using synthetic proteins of another source, i.e. derived naturally or from solid phase techniques.


Regardless of the Groups of Group I, III or IV chosen, applicants are required to elect a species of osteogenic proteins from either of

- 1) OPS,
- 2) OP7,
- 3) OPM,
- 4) OPP,
- 5) CBMP2AS,
- 6) CBMP2AL,
- 7) CBMP2AM,
- 8) CBMP2BS,
- 9) CBMP2BL, or
- 10) CBMP2BM.

Because these inventions are distinct for the reasons given above, and have acquired a separate status in the art because of their recognized divergent subject matter and as shown by their different classification restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed. (37 CFR 1.143).

Due to the complexity of the restriction, applicants' counsel was not contacted telephonically.



NNutter:d1

703-557-6525

12/14/89

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PATENT EXAMINER  
ART UNIT 153